

REMARKS

Claims 1-47 are all the claims pending in the application.

Claim Rejections Under 35 U.S.C. § 103

The Examiner has rejected claims 1, 4, 7, 10 and 13-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,578,014 to Murcko, Jr. (“Murcko”) in view of U.S. Patent No. 4,926,325 to Benton *et al.* (“Benton”). For at least the following reasons, Applicant traverses the rejection.

Claim 1 recites a commodity order issuing and accepting method that comprises “inputting said order issuer's payment date into said second input field on said order issuing device [and] transmitting said order issuer's payment date to said order accepting device.”

The Examiner contends that Buyer Views Items Page 1800 (Fig. 18 of Murcko) corresponds to the claimed second electronic document, but concedes that Murcko does not disclose the claimed second input field. However, the Examiner applies Benton to allegedly cure the deficiency. The Examiner contends that one skilled in the art would modify the system of Murcko to incorporate inputting a payment date “in order to provide the buyer payment options” and cites col. 16, lines 30-33, of Benton. (Office Action at page 4.)

Murcko relates to a method of purchasing information or products upon receipt of the product, i.e., “sellers [] provide items to buyers without guarantee of a specific payment amount.” (Abstract.) The “buyers [] decide how much to pay for those items after having received them.” (Id.)

Benton relates to financial transactions between buyers and sellers using at least one facsimile machine. (Abstract.) The “buyer payment options” in Benton merely relate to proceeding with the transaction immediately or setting a subsequent date and time for the proposed transaction. Benton discloses that the subsequent date and time would correspond to reduced telephone line charges. (Col. 16, lines 30-35, of Benton.) Accordingly, the “buyer payment options” merely refer to when the buyer wants to make the actual sale.

In Murcko, the seller provides the product without a guarantee of payment. (Col. 3, lines 1-3.) Accordingly, the actual “sale” would be when the seller ships the product or when the buyer receives the product. After receiving the product, the buyer in Murcko enters a payment amount that the buyer decides. (Col. 22, lines 63-67, Abstract.)

Therefore, the entering of the payment amount in Buyer Views Items Page 1800 is done after the “sale.” Accordingly, modifying the Buyer Views Items Page 1800, as implicitly suggested by the Examiner, to include Benton’s “buyer payment options,” which refer to when a sale is to be made, would not be beneficial to the system in Murcko since the sale has already been made by the time the buyer enters the payment amount.

In the present Office Action, the Examiner states that the above Applicant's remarks filed October 16, 2006 have been fully considered but they are not persuasive and that the Examiner has met his burden to establish *prima facie* case of obviousness. Applicant respectfully disagrees.

In Benton the “buyer payment options” merely refer to when the buyer wants to make the actual sale, and in Murcko that the actual “sale” would be when the seller ships the product or when the buyer receives the product. Then, after receiving the product, the buyer in Murcko enters a payment amount that the buyer decides. (Col. 22, lines 63-67, Abstract.). As a result, the entering of the payment amount in Buyer Views Items Page 1800 is done after the “sale.” Therefore, the Examiner fails to provide an argument to the contrary that modifying the Buyer Views Items Page 1800, to include Benton’s “buyer payment options,” which refers to when a sale is to be made, would not be beneficial to the system in Murcko since the sale has already been made by the time the buyer enters the payment amount.

Further, the Examiner’s own argument additionally provides reasons that it fails to make a *prima facie* case of obviousness, where the Examiner states that “in Figure 18 buyer views items page, which enables buyers to view all the items that seller have provided to the buyer and optionally sets payment amounts for this item (col. 28, lines 15-19)” (office action page 8). Optionally indicates that the buyer can pay but does not have to pay. (col. 23, lines 5-10). Also, if the seller is unhappy with the amount of payment for a given item, the seller can not undo the transaction and get the item back (col. 23, lines 10-13). Thus, the Examiner’s argument strengthens the Applicant’s argument that the “sale” occurs when the seller ships the product or when the buyer receives the product. Also, the sale does not depend on whether a payment was made to the seller for the item.

Furthermore, Applicant’s argument is strengthened again by the Examiner’s statement that “[w]hen the buyer sets the payment amount for an item, a payment date input field

subsequently appears (Figure 18 ref. 1812) (col. 28, lines 26-30)" (office action page 8). In Murcko, when the buyer sets the payment amount for an item, "the buyer has a predetermined period of time in which to make a payment to the system operator to pay for the item" (col. 28, lines 28-30). Also, "[T]he buyer has a predetermined amount of time after the information is entered in which to assign the payment (if any), and a predetermined amount of time (either after the information is entered or after the payment is assigned) in which to pay" (col. 28, lines 31-35). If the buyer does not pay on time to the system operator, the payments for the items will be set to zero (col. 28, lines 55-56). Entering the above amount in the Buyer Views Items Page 1800, which could be a dollar amount of what the buyer originally agrees to pay the seller to an end dollar amount of zero if the buyer changes their mind, is done after the sale is made i.e., the seller can not undo the transaction and get the item back (col. 23, lines 10-13). Additionally, the seller is not involved in the transaction of the money, where the transaction of money is done through the system operator. Because this transaction of the money is done through the system operator and not the seller confirms that the sale is made when the seller ships the product or when the buyer receives the product.

Next, the Examiner attempts to advance her *prima facie* case of obviousness with out addressing the issue of "sale" in Benton and Murcko by stating that one would turn "to Benton to teach the inputting the order issuers' payment date and transmitting the order issuer's payment date" (office Action page 8) where, as stated above in Murcko, that the sale has already been made and without any actual payments (if any) and in Benton, the "buyer payment options" which refers to inputting the order issuers' payment date, merely refer to when the buyer wants

to make the actual sale. Therefore, by the Examiner turning to Benton before addressing the “sale” issue of Benton and Murcko, as disclosed above by the Applicant, and where the Examiner’s own argument continues to reinforce Applicant argument that the Examiner has failed to establish a *prima facie* case of obviousness.

Therefore, for at least the reasons given above, Applicant respectfully submits that one skilled in the art would not have combined the teachings as suggested by the Examiner, and the Examiner has failed to make a *prima facie* case of obviousness.

Because claims 4, 7, 10 and 37 recite features analogous to those given above with respect to claim 1 and because the Examiner’s rejection of these claims is identical to that given above with respect to claim 1, Applicant submits that claims 4, 7, 10 and 37 are patentable for at least reasons analogous to those given above with respect to claim 1.

Applicant submits that claims 13-47 are patentable at least by virtue of their respective dependencies.

In addition, Applicant incorporates by reference the arguments with respect to these claims in the October 16, 2006 Amendment.

Claims 2, 3, 5, 6, 8, 9, 11 and 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Murcko in view of Benton and U.S. Patent Number 6,314,406 to O’Hagen (“O’Hagen”). Applicant respectfully traverses this rejection because O’Hagen either alone or in combination with Murcko fails to disclose or suggest all of the claim limitations. Specifically,

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claims 2, 3, 5, 6, 8, 9, 11 and 12 are allowable based on its dependency from claims 1, 4, and 10, because O'Hagen fails to make up for the deficiencies of Murcko described above.

In addition, Applicant incorporates by reference the arguments with respect to these claims in the October 16, 2006 Amendment.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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